

FILED
COURT OF APPEALS
DIVISION II

2012 DEC 28 PM 1:18

STATE OF WASHINGTON

BY [Signature]
DEPUTY

COURT OF APPEALS

DIVISION II

NO: 43504-7-II

JOY E. FIX
Appellant

v.

MICHAEL FIX, et al

APPELLANT'S REPLY BRIEF

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REPLY

In answer to Respondent's Brief and arguments, Appellant submits the following reply.

Since this matter was decided on summary judgment, the facts are not disputed and the court did not enter any finding or conclusions on the initial summary judgment. The court did however make findings of fact and conclusions of law in awarding attorney fees. However, it did not cite a specific principal or statute that allowed it to award attorney fees.

Clifford Fix and his then wife purchased the property in question from Appellant and her husband in 1986.

In 1987, Clifford Fix and his then wife executed what is labeled a Relinquishment of All Rights to the Property to Appellant and her husband.

Clifford Fix and his then wife never paid taxes or made any claim to the property for more than 25 years.

Respondent rented the property from Appellant and her husband for more than 20 years by paying the taxes which were in Appellant and her husband's name.

Respondent was attempting to buy the property from the Appellant and her husband when her husband died (9/2008).

The Respondent represented to the Appellant, her attorney, Clifford Fix and presumably Clifford's exwife, that he was acting on behalf of Appellant and her wishes.

At page 15 of Respondent's Brief, he claims the Appellant has no standing to bring this suit citing **Gustafson v Gustafson, 734 P.2d 949 (1987)** which held that the plaintiff must have a personal stake in the outcome of the case in order to bring suit.

Also, at page 16 of his brief, he cites **NW Independent Forest Mfg. V Dept. of Labor and Industries, 899 P.2d 6** as follows, "It is sometimes said a real party in interest is the person, if successful, will be entitled to the fruits of the action".

Appellant has a personal stake in the outcome of this suit. She wants the property in question put in her name. Therefore, the Respondent's position is not applicable based on the facts and pleadings and his authorities.

The question in this matter is whether or not Respondent has been unjustly enriched. He paid nothing for the property, lied to his mother, her attorney, his brother and presumably his ex-sister-in-law.

Respondent discusses the defenses Clifford Fix would have, namely the statute of limitations.

Could they raise the defense of the statute of limitations after they signed and delivered the relinquishment of all interest in the property and failed to pay taxes for more than 25 years? Did the Appellant and her husband have a right to rely on the relinquishment to wave the statute of limitations? However, Respondent took title by way of a quit-claim deed stepping into the shoes of Clifford Fix and his ex-wife. Appellant alleges they could not rely on the statute of limitations and therefore since the Respondent stepped into Clifford Fix's and his wife's position, neither can the Respondent.

However, that is not the basis for this suit. That is only to address Respondent's position.

In addition, Appellant raised the issue of equitable estoppel in the trial court and believed that it is a proper response to the Respondent's argument.

At page 22 of his brief, Respondent states that he did not promise to convey any interest in the property to Appellant. Of course not in that Appellant believed Respondent was acting on her behalf and did not learn of the deeds to the Respondent until over a year after they were filed. At the time she sought counsel and commenced this suit.

Respondent at page 23 of his brief cites **McCutcheon v. Brownfield, 467**

P.2d 868 (1970) for the position that a confidential relationship exists “when one has gained the confidence of the other and purports to act or advise with the other’s interest in mind”. Exactly the facts in this matter. He told his mother, her attorney, and his brother he was acting on behalf of the Appellant.

ATTORNEY FEES

Appellant agrees that issue of the award of attorney fees is subject to review only for abuse of discretion. The Appellant’s position is that the court abused its discretion in awarding attorney fees. As stated in her opening brief Appellant cited **Greenbank Beach and Boat Club, Inc. v Bunney, Division I (5/29/2012)** held that “... the inherent power to assess attorney fees exists only in “narrowly defined circumstances.” Citing **Roadway Exp., Inc v. Piper, 447 U.S. 752 (1980)**. In its decision the court stated “**But litigants are not ordinarily required to pay attorney fees for making losing arguments . . . the court did not find . . . losing arguments were frivolous.**”

In **Kelly v. Moessiang, 287 P.3rd 12 (2012)Division III)**, the court citing **Fisher Props. , Inc. v. Arden-Mayfair, Inc. 726 P.2d 8** “Attorney fees may be awarded only when authorized by private agreement, a Statute, or a recognized ground of equity.

Appellant is unaware, since this is a notice pleading state, of any case, statute or law authorizing the award of attorney fees for an inarticulate pleading without a finding of frivolous law suit or one founded on bad faith. The court made specific findings that the Appellant's suit was not frivolous nor brought in bad faith.

CONCLUSION

The Appellant has standing to originally bring this suit in that she would benefit from a ruling in her favor, **Gustafson v Gustafson, NW Independent Forest Mfg. V Dept. of Labor and Industries, and McCutcheon v. Brownfield** supra. A constructive trust does not require the plaintiff to have had title to the property. The test is was the defendant unjustly enriched. Respondent obtained property worth in excess of \$75,000 without paying any money or other valuable consideration.

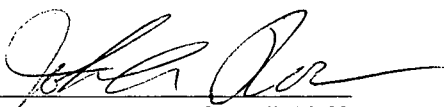
The award of attorney fees was an abuse of discretion in that it was not authorized by a contract, statute or recognized equitable principal and parties are not ordinarily required to pay attorney fees for making losing arguments. **Greenbank Beach and Boat Club, Inc. v Bunney, Roadway Exp., Inc v. Piper**, and **Kelly v. Moessiang**, supra.

In this matter, the facts were undisputed and Respondent knew exactly what he was accused of doing. This a notice pleading state and Appellant knows of no

equable principal allowing attorney fees nor does the Respondent cite one.

Appellant believes that she plead a cause of action and believes on the undisputed facts, and the court should reverse the trial court and quiet title to the property in question to the her and reverse the award of attorney fees to the Respondent.

Dated the 27th day of December, 2012.



John A. Rorem WSBA# 4069
Attorney for the Appellant

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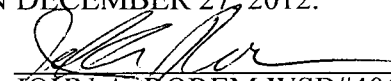
DECLARATION OF MAILING

I, JOHN A. ROREM, do hereby state under the laws of perjury of the State of
Washington as follows:

That on December 27, 2012, I, JOHN A. ROREM, did deposit in the United States Mail
a copy of Appellant's Reply Brief to

THOMAS L. DICKSON
1201 PACIFIC AVE, STE 1401
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SIGNED AT GIG HARBOR, WASHINGTON ON DECEMBER 27, 2012.


JOHN A. ROREM WSB#4069
Attorney for the Appellant

DECLARATION OF MAILING